paid. This amount the trustees can deduct from the payment or payments of income next due to be made to the new beneficiaries.

If the amount is not in fact equivalent to the amount of interest paid to the Collector of Estate Duties the benefit must accrue to, or the loss must fall on, that part of the corpus of the trust estate which is deemed to pass.

In reply to the 3rd, 4th and 5th questions on the summons, therefore, my directions are:—

(a) All sums paid or hereafter to be paid by the trustees as estate duty upon the cesser of any life interest under the will of the testator must be borne by and paid out of that portion of the corpus of the testator's residuary estate which is deemed to have passed.

(b) Any annuitant benefiting by the cesser of a life interest is not liable to pay any part of such estate duty but is liable to refund to the trustees the difference between the total amount of any income paid to him, between the date of death of any deceased annuitant and the date on which estate duty is actually paid in connection with such death, and the amount of income which should have been paid to him during that period had the estate duty been paid punctually on the date of such death; and the trustees may deduct such difference from any payment or payments of income next becoming due to the annuitant.

(c) Subject to recouping the estate to the extent of the repayments or deductions next beforementioned, any interest properly payable by the trustees to the Collector of Estate Duties shall be borne by and paid out of the corpus of that part of the residuary estate of the testator which is deemed to have passed.

Judgment accordingly.

Solicitors: *Braddell Bros.; Drew & Napier; Allen & Gledhill; Rodyk & Davidson.*

Re SYED HASHIM BIN KASSIM, DECD. late SULTAN OF SIAK
TUNGKU KECHIL MUDA SYED SAGOFF & ORS. v. SHERIFF KASSIM BIN HASHIM, SULTAN OF SIAK & ORS. (No. 2)

[O.C.J. (Adrian Clark J.) September 24, 1936]
[Singapore Suit No. 930 of 1922]

Settled Estates Ordinance, ss.4 and 27 — Permanent improvements — Against what found chargeable.

The costs of installing sanitary appliances when the Municipal Commissioners require such installations to be made constitute permanent improvements to the property and are payable wholly out of capital moneys; and this rule also applies to additional buildings placed on the land in order to enhance its value as a residential property and to obtain for it a better letting value.

Semble: this rule also applies in cases of substitution in dwelling houses of modern sanitation for the obsolete system previously in use, even though not under compulsion of the Municipal Commissioners.

ADJOURNED SUMMONS.

Laycock for all plaintiffs except No. 5 (life tenants).

Williamson for plaintiff No. 5 (a life tenant).

Munro for the trustees.

C. C. Tan for J. C. Cobbett, representative of remaindermen.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Adrian Clark J.: In this matter an application, by Summons No. 426 of 26th May, 1936, was made by the present trustees of the abovenamed estate, for various directions required in connection with its administration.

Other parties in the suit also took out a summons raising certain queries.

[249] As a result, orders of Court were made for enquiries by the Registrar and the Registrar has accordingly filed two certificates dated respectively 25th June and 16th July, 1936. [249]

By Summons No. 620 and Summons No. 623 of 27th July, 1936 application is now made by all the plaintiffs in the suit, except the 1st and 5th, that the certificates of the Registrar be varied on four points.

The submission underlying all these applications for variation is the same, namely, that the cost of certain building operations should be borne entirely out of capital.

In three instances the cost is that of installing sanitary installations in dwelling houses forming part of the trust estate.

In the fourth instance the cost is that of erecting a kitchen and motor shed in certain premises used as dwelling houses and forming part of the trust estate.

I think it is clear that the immovable property which the testator bequeathed in trust to the trustees is settled estate within the meaning of the Settled Estates Ordinance. Part of it has been sold by order of the Court and the proceeds are in the hands of the Accountant-General awaiting the further order of this Court as to their disposal.

The whole of the nett income of the trust estate is at present being enjoyed by a number of annuitants who are entitled to receive it in various shares until the period of distribution, which period is not likely to be reached for many years.

Under section 4 of the Settled Estates Ordinance these proceeds of sale may be dealt with by the Court in such manner as the Court or a Judge thinks best calculated to carry out the intentions of the settlor, and, subject thereto, with due regard to the interests of those intended to be benefited by the settlement.

Under section 27 of the Ordinance such proceeds of sale may be applied to the purpose, *inter alia,* of the permanent improvement of any immovable property subject to the settlement.

The enumeration of powers in section 27 is probably not meant to be exhaustive. Those in section 4(2) are certainly wider and, if necessary, the Court can resort to section 11 of the Courts Ordinance if it wishes to make any order not clearly covered by the authority given in the Settled Estates Ordinance.

The following cases were cited to me in the course of the argument:—

In re Houghton Estate, 30 Ch. D. 102; *In re de Teissier's Settled Estate,* [1893] 1 Ch. 153 at pp. 162 &c.; *In re Barney,* [1894] 3 Ch. 562; *In re Lever,* [1897] 1 Ch. 32; *In re Farnham's Settlement,* [1904] 2 Ch. 561; *Standing* v. *Gray,* [1903] Ir. Rep. 1 Ch. 49; and *Chang Kam Long* v. *Busfield & anor.,* [1932] S.S.L.R. 424; [1933] M.L.J. 293.

In the present case the immovable property of the trust consists largely of dwelling houses in none of which any of the beneficiaries resides. The houses are let to strangers and the nett income produced by these lettings are distributed by the trustees in accordance with the terms of the trust.

The sanitary installations in question do not consist of repairs to existing sanitary arrangements, nor to mere improvements of existing arrangements due to the necessity having arisen for their repair and to such necessary repairs being then carried out with improved or more costly materials. The sanitary installations are of a type essentially different from those previously existing and, in my opinion, constitute "permanent improvements" to the property. They have been installed under the compulsion of law and not merely for the greater comfort of some life-tenant. The Municipal Commissioners, under powers given to them by the Municipal Ordinance, have required these installations to be made and, if these requirements had not been met, the Municipal Commissioners, by virtue of these statutory powers, could have done the work themselves and recovered the cost of it from "the owners". It is clear from the definition of "owner" in section 3 of the Municipal Ordinance that it is the trustees, and not the annuitants benefiting under the trust, who would have been responsible under the Ordinance.

Moreover it seems clear that the substitution in these dwelling houses of modern sanitation for the obsolete system previously in use must increase both the capital value of those premises and the annual rentals obtainable from them, and that the estate as a whole will benefit by this increase in capital value.

Let us suppose that the immovable property of a trust consists of two dwelling houses Nos. 99 and 100 X Street; that each is valued at $1,000 and is let at an annual rent of $100, that each house is old and dilapidated; that No. 99 is sold by order of the Court; but that No. 100 is rebuilt or permanently improved so as to enhance the value of the property to $2,000 and the annual rental to $200. There could be no reasonable doubt in such a case that the proceeds of sale of No. 99 could be expended in paying, as a capital charge, the cost of the rebuilding or permanent improvement of No. 100.

In practice the figures may not balance with such nicety but the principle must, I think, remain that where any expenditure is such as to increase the capital value of the trust property by an amount reasonably equivalent to that expenditure then that expenditure is a capital charge.

[250] [250] There may be cases where such expenditure would temporarily increase the rental value without effecting a corresponding increase in the capital value. If so those cases must be considered in the light of their own circumstances. In the present case it appears to be agreed that not only has the expenditure on sanitary installations been what is described, in one of the decisions cited to me, as a case of "vis major," but that it has increased both the capital and letting values of the dwelling houses concerned to an amount reasonably proportionate to the actual amount expended.

For all these reasons I have no doubt that this expenditure on sanitary installations is properly charegable against capital and that no part of it ought to be charged against income.

With regard to the erection of the kitchen and motor shed, there was no compulsion or intervention by a public authority but it is admitted that these were additional buildings placed on the land in order to enhance the value of it as a residential property and to obtain for it a better letting value.

In these circumstances I am satisfied that the cost of erecting these buildings should also be provided wholly out of capital monies.

The Registrar's order was based on a consent by all parties to the suggestion that if (which was not admitted by some of them) any part of the expenditure ought to be paid out of income that part should be 25 per cent. of the whole. The matter does not seem to have been argued before the Registrar with the precision and completeness with which it was argued before me; nor were all the authorities cited to him.

In all the circumstances I am satisfied that orders should be made in terms of Summons No. 620 and of Summons No. 623. In respect of Summons No. 426, I am prepared to give directions that the expenses of installing sanitary appliances in future in circumstances similar to those here dealt with should be borne wholly by capital; that any capital monies now in Court may be paid out to the extent necessary to defray any expenditure at present payable as capital charges as the result of the orders now made; and that any such capital expenditure in the future may be paid by the trustees by selling, so far as may be necessary, any investment then held by them and forming part of the capital of the trust estate.

The costs of all the applications before me will be paid by the trustees out of capital, subject to reserving for further argument the question as to whether more than one set of costs should be allowed for the plaintiffs. The capital monies now in Court may be paid out to such extent as may be necessary to provide for the amount of costs finally allowed and payable by the trustees.

Any balance of the capital monies now in Court may be paid out, for investment by the trustees in accordance with the terms of the trust.

There will be liberty to apply in connection with the orders now made and, in connection with the further consideration of any prayer in Summons No. 426 not considered to have been now fully disposed of, any party may apply to set down that summons for further hearing provided that this is done within 21 days from the date of this judgment.

Judgment accordingly.

Solicitors: *Braddell Bros.; Drew & Napier; Allen & Gledhill; Rodyk & Davidson.*